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21 **UNITED STATES DISTRICT COURT**

22 **NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

23
24 IN RE TIKTOK, INC. PRIVACY
25 LITIGATION

26 CASE NO. 5:19-cv-07792-LHK

27 Hon. Lucy H. Koh

28 [Consolidated with 5:20-cv-02992; 5:20-cv-03185; 5:20-cv-03212; 5:20-cv-03294; 5:20-cv-03390; 4:20-cv-03555; 3:20-cv-03795]

REPLY IN SUPPORT OF JOINT
MOTION PURSUANT TO RULE 23(g)
FOR APPOINTMENT OF INTERIM
LEAD COUNSEL AND PLAINTIFFS'
EXECUTIVE COMMITTEE

Date: July 23, 2020
Time: 1:30 p.m.
Ctrm: 8

1 **I. THE OTHER APPLICANTS DO NOT SERIOUSLY DISPUTE THAT THE**
 2 **HONG/P.S. GROUP BEST SATISFIES RULE 23(g).**

3 The other applicants, while impressive, do not contest that the Hong/P.S. Group has done
 4 the most *work* to identify, investigate, and litigate the claims by: (1) initiating their work a year
 5 earlier than the others, (2) using the broadest array of experts and investigators, (3) conducting
 6 a mediation (which included a BIPA claim) before any other suits were filed, and (4) engaging in
 7 discovery. The other applicants also do not dispute that the Hong/P.S. Group filed the only
 8 complaint that includes conduct and defendants in China, and that such conduct and defendants
 9 are crucial to establishing liability, making the victims whole, and preventing future privacy
 10 abuses. No other applicants question that the Hong/P.S. Group's work resulted in the widest range
 11 of claims protecting the most victims from defendants' privacy invasions, rather than focusing just
 12 on BIPA violations against minors in Illinois. And the other applicants do not challenge that the
 13 Hong/P.S. Group filed the first BIPA case, and the only BIPA claim against the China-based
 14 defendants, with numerous technical allegations entirely absent from other applicants' complaints.

15 While each applicant is experienced and talented, none claim to offer as strong a
 16 combination of *experience, knowledge, resources* and *diversity* as the Hong/P.S. Group, which
 17 consists of award winning trial lawyers with (1) class action trial experience, (2) deep familiarity
 18 with China and Asia, and (3) substantial data privacy experience. Nor do any other applicants
 19 dispute that the Hong/P.S. Group is the only one with lawyers who have both prosecuted and
 20 defended class actions; the only one with lawyers who have litigated patent and source code
 21 issues; and the team with the most substantial combination of financial and human resources.

22 **II. THE MINOR CRITIQUES DIRECTED AT THE HONG/P.S. GROUP ACTUALLY**
HIGHLIGHT ITS ADVANTAGES.

23 The various comments targeting the Hong/P.S. Group underscore its core strengths. The
 24 suggestion that the Hong/P.S. Group lacks experience litigating class actions against China-based
 25 companies? Kara Wolke's declaration confirms her superior experience litigating a class action
 26 against a China-based company and obtaining a far greater settlement than the one the other
 27 applicant touts. Relatedly, Ekwan Rhow's declaration demonstrates extensive experience with the
 28 Chinese government and China-based companies, and Megan Jones's declaration highlights the

1 unanimous Supreme Court decision (following a trial verdict) that her firm obtained against
 2 China-based defendants. The comment that the Hong/P.S. Group lacks Chinese language
 3 speakers? Mr. Rhow's declaration discusses two of our Chinese-speaking lawyers, including one
 4 who already has worked on the *Hong* case. The critique that the Hong/P.S. Group lacks BIPA
 5 experience? Ms. Jones's declaration disproves that. Every positive attribute possessed by the other
 6 applicants is likewise held by the Hong/P.S. Group – and often in greater abundance.

7 Without a Rule 23(g) basis to challenge the Hong/P.S. Group, one applicant asserts that we
 8 are uncooperative. Not so. We are the only five-firm team formed in the spirit of cooperation to
 9 use our complimentary skills, knowledge and experience to promote efficiency and excellence,
 10 and we are happy to work with anyone the Court may appoint. We tried to coordinate the transfer
 11 of the Illinois cases to N.D. California, but Illinois counsel refused. The same applicant complains
 12 we declined a mediation subsequently scheduled by the Illinois counsel who filed later BIPA
 13 claims and who have been appointed *temporary* interim lead counsel in N.D. Illinois solely for the
 14 MDL. But counsel in at least five of the eight N.D. Cal. cases have declined mediation prior to
 15 resolution of leadership and venue, which places the Hong/P.S. Group in the *majority* and this
 16 applicant in the minority. We declined the mediation to *protect the class* from a reverse auction
 17 established to serve Illinois counsel's attempt to move all the cases to Illinois despite jurisdictional
 18 barriers in Illinois that place those cases in a poor bargaining position. *See* Doc. No. 73. The same
 19 applicant oddly criticizes *Hong* counsel for moving to intervene in the Illinois cases (1) to *protect*
 20 the *Illinois class* from a reverse auction and jurisdictional risks (defendants declined *our* invitation
 21 to waive personal jurisdiction in Illinois) and (2) to promote *judicial efficiency* by seeking transfer
 22 to this district where jurisdiction is clear. Even in denying intervention, the Southern District of
 23 Illinois still recognized a potential jurisdictional problem in Illinois, but opined that California
 24 federal courts are not as competent to oversee BIPA litigation. It is perplexing why the applicant
 25 touts the S.D. Illinois opinion, which ignores N.D. California's considerable BIPA experience and
 26 which S.D. Illinois counsel are using in the MDL to try to move the cases there.

27 **CONCLUSION:** We respectfully submit that our team best satisfies Rule 23(g) and, if
 28 selected, we defer to the Court as to whether other well qualified applicants should participate.

1 DATED: July 10, 2020

**BIRD, MARELLA, BOXER, WOLPERT, NESSIM,
DROOKS, LINCENBERG & RHOW, P.C.**

2 By: /s/ Ekwan E. Rhow

3 Ekwan E. Rhow

4 Attorneys for Plaintiffs Misty Hong, minor A.S.,
5 through her mother and legal guardian Laurel
6 Slothower, and minor A.R., through her mother
7 and legal guardian Gilda Avila

8 DATED: July 10, 2020

GLANCY PRONGAY & MURRAY LLP

9 By: /s/ Kara M. Wolke

10 Kara M. Wolke

11 Attorneys for Plaintiffs Misty Hong, minor A.S.,
12 through her mother and legal guardian Laurel
13 Slothower, and minor A.R., through her mother
14 and legal guardian Gilda Avila

15 DATED: July 10, 2020

PHILLIPS, ERLEWINE, GIVEN & CARLIN LLP

16 By: /s/ David M. Given

17 David M. Given

18 Attorneys for Plaintiffs Meghan Smith, minors
19 C.W. and I.W., through their mother and legal
20 guardian Mikhaila Woodall, and minor R.P.,
21 through her mother and legal guardian Lynn
22 Pavalon

23 DATED: July 10, 2020

HAUSFELD LLP

24 By: /s/ Megan E. Jones

25 Megan E. Jones

26 Attorneys for Plaintiffs minor P.S., through her
27 legal guardian Cherise Slate, and minor M.T.W.,
28 through her legal guardian, Brenda Washington

29 DATED: July 10, 2020

BURNS CHAREST LLP

30 By: /s/ Amanda Klevorn

31 Amanda Klevorn

32 Attorneys for Plaintiffs minor P.S., through her
33 legal guardian Cherise Slate, and minor M.T.W.,
34 through her legal guardian, Brenda Washington

1 **ATTESTATION**

2 I, Ekwan E. Rhow, hereby attest, pursuant to N.D. Cal. Local Rule 5-1(i)(3), that
3 concurrence to the filing of this document has been obtained from each signatory.

4

5 */s/ Ekwan E. Rhow*

6 Ekwan E. Rhow

7

8 **CERTIFICATE OF SERVICE**

9

10 I hereby certify that on July 10, 2020, I authorized the electronic filing of the foregoing
11 with the Clerk of the Court using the CM/ECF system which will send notification of such filing
12 to the email addresses denoted on the Court's Electronic Mail List, and I hereby certify that I
13 caused to be served the foregoing document via email and/or the United States Postal Service to
14 the non-CM/ECF participants indicated on the Additional Service List.

15 I certify on this date of July 10, 2020 under penalty of perjury under the laws of the United
16 States of America and the State of California that the foregoing is true and correct.

17

18 */s/ Ekwan E. Rhow*

19 Ekwan E. Rhow

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